Managing Government Records

An Introduction to
Kentucky's
Public Records Management Law

Revised June 2008

Table of Contents

Introduction	3
What are public records?	3
What is a public agency?	4
Do agencies have to document their activities?	4
Who has responsibility for public records management in Kentucky?	4
What is records management?	4 - 5
What is records scheduling?	5
Under Kentucky law, what are the records management responsibilities of an agency head?	6
What is a records retention schedule?	6 - 7
What is a records officer?	7 - 8
What is disposition?	8
What about the proper storage and protection of records?	8 - 9
What about state agency publications?	9
How are state agency publications managed?	9
Retention and management of public records and the role of the Office of the Attorney General	9 - 10
What services does Kentucky Department for Libraries and Archives provide in this process?	10
What is the function of the State Archives and Records Commission?	10 - 11
What is the scope of the Commission's responsibility and who are its members?	11
Where should I go for further assistance or more detailed information?	11 - 12

Introduction

Managing Government Records: A Cooperative Undertaking

All public employees need good records to do our jobs. Proper record keeping and good records management helps assure effective administration of programs, fulfill legal responsibilities, provide an adequate audit trail, and record the history and intent of public policy. Employees of publicly-funded institutions have responsibility under Kentucky law to see that information created and maintained in government offices -- **public records**, as defined by statute -- is organized and accessible for use. This requirement is outlined in the Commonwealth of Kentucky's Open Records Act. The Act explicitly recognizes the connection between policy goals for public records, and the goal of the Open Records Act, to make government records accessible to the public, barring any statutory restrictions.

Implementing and maintaining a records management program in government offices helps control records and costs, assures the protection and sound management of information, and complies with the Open Records Act.

Implementation of a records management program involves the participation of agency personnel and the agency's Records Officer, working in cooperation with staff of the Kentucky Department for Libraries and Archives and the State Archives and Records Commission. Under Kentucky law, KRS 171.410 - 740, the head of a public agency, the department, and the commission each have specific responsibilities for ensuring that records are created and well-managed and that permanently valuable records are preserved, protected, and accessible.

What are public records?

Public records are defined by Kentucky statute **(KRS 171.410 (1))** as ***"all books, papers, maps, photographs, cards, tapes, disks, diskettes, recordings, and other documentary materials, regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."***

Public records are recorded information, whatever format, created or received by a state or local government agency, which document a transaction or activity by or with any public official or employee of that agency.

What is a public agency?

For public records management purposes, a **public agency** is defined in **KRS 171.410 Section 4** as ***"every state or local office, state department, division, bureau, board, commission and authority; every legislative board, commission, committee and officer; every county and city governing body, council, school district board, special district board, municipal corporation, and any board, department, commission, committee, subcommittee, ad hoc committee, council or agency thereof; and any other body which is created by state or local authority and which derives at least twenty-five percent (25%) of its funds from state or local authority."***

Do agencies have to document their activities?

Under the terms of KRS 171.640, the agency head is assigned explicit responsibility for ensuring that records containing adequate and proper documentation of the organizational functions, policies, decisions, procedures, and essential transactions of the agency are created and preserved. This includes records designed to furnish information necessary to protect the legal and financial rights of the government and of persons directly affected by a government agency's activities.

Who has responsibility for public records management in Kentucky?

All state and local government employees are responsible for the records they create and maintain and all employees can make a major contribution to good records management in their agencies on a daily basis.

Kentucky law (KRS 171.410 - 740) assigns broad authority for the management of state and local government records to the Kentucky Department for Libraries and Archives. The statutes also set out specific responsibilities delegated to the head of any public agency and to the State Archives and Records Commission.

What is records management?

Records management is the systematic control of recorded information, regardless of format, from original creation to ultimate disposition. Every office creates records, whether in paper, film, electronic record, or some other format.

These records can be a burden to maintain. Records management helps an organization:

1. Decide which records to keep and which to destroy;
2. Ensure an adequate documentary record of its functions, policies, decisions, procedures, and essential transactions;
3. Identify and properly control records of continuing or archival value;
4. Operate effectively, economically and efficiently; and
5. Provide the right information to the right person, at the right time, at the lowest possible cost.

A publicly-funded agency is required to have a records management program and to work with the Kentucky Department for Libraries and Archives and the State Archives and Records Commission to create an appropriate Records Retention Schedule.

What is records scheduling?

The basis of an agency's program to manage government information is the systematic process of identifying, describing, and analyzing each record and each electronic records system created by an agency. This leads to a preliminary assessment of the administrative, legal, fiscal, and future historical or research value of each record type. These values, and any special directions for the management or disposition of this information during and after its active office life, are documented in a draft Records Retention Schedule. Draft schedules are submitted to the State Archives and Records Commission, which has final authority for approval.

Records Retention Schedules, when approved by the Commission, furnish public agencies with clear legal authority to make disposition of their records accordingly, and with a strong resource for management control. They help public officials identify which records must be retained permanently and which records may be destroyed after a certain period of time. They help an agency ensure that adequate documentation of its activities has been created and is being maintained, as required by statute.

Schedules become the basis for each agency's records management program, ensuring accountability for the information being produced, serving as a critical asset in a state agency's strategic information resources planning (mandated under KRS 61.950) and providing agencies with a valuable resource with which to respond to information requests under Kentucky's Open Records Law (KRS 61.870 – 61.884). Without an approved Records Retention Schedule, an agency, whether state or local, does not have the legal authority to destroy any of its records, regardless of their format, and can incur substantial costs or liabilities if such destruction does occur.

Under Kentucky law, what are the records management responsibilities of an agency head?

The head of a public agency has a key role in ensuring the implementation of a records management program. By the terms of KRS 171.680, the agency head is required to establish and maintain an active, continuing program for the economical, efficient management of the records of the agency. The law, as stated in KRS 171.680 (2), mandates that this program should include:

- Effective controls over the creation, maintenance, and use of records in the conduct of current business;
- Cooperation with the Department for Libraries and Archives in applying standards, procedures, and techniques designed to improve the management of records;
- Promotion of the maintenance and security of records deemed appropriate for preservation, and facilitation of the segregation and disposal of records of temporary value;
- Compliance with the provisions of KRS 171.410 to 171.740 and the rules and regulations of the Department.

What is a Records Retention Schedule?

An essential element of a records management program is a Records Retention Schedule. A Records Retention Schedule is a list of each record type, termed a "record series", and each electronic records system created by a public agency. A record series is simply a filing unit or document maintained as a unit because it relates to a particular subject or function, results from the same activity, has a particular form, or because of some other relationship arising out of its creation, receipt or use.

A schedule shows the title of each record type, a unique number by which it can be identified, the time period during which the record is used in the office, where it is created or used, instructions for steps to be taken when the period of its active office use has expired, and final disposition instructions.

A key part of a fully implemented records management program is the regular application and use of an approved Records Retention Schedule.

A current, accurate Records Retention Schedule should represent a comprehensive inventory of the information holdings of a government agency.

Having a schedule approved by the State Archives and Records Commission is an important first step for an agency as it develops a records management program. For a records management program to be fully implemented, however, an approved schedule must be used on a regular basis by agency personnel.

When an agency finds it must create new records or electronic systems or when it determines that certain records or systems are obsolete and are no longer being created, the schedule must also be revised to reflect these changes.

By law, KRS 171.420 and 171.670, draft schedules are reviewed and evaluated by the State Archives and Records Commission. Once new or revised schedules are approved by the Commission, agencies may apply schedules to their records management needs, with the confidence that they have the legal authority to make disposition of their records when following the directions contained in the schedule.

The State Archives and Records Commission meets and approves new and revised schedules four (4) times a year. The meetings are held on the second Thursday of March, June, September and December of each calendar year.

There are records that every agency generates, such as, personnel or fiscal records. The State Archives and Records Commission institutes General Schedules for these common records. The General Schedule for State Agencies may be accessed on KDLA's website at
http://kdla.ky.gov/recmanagement/schedules/kystateagency.pdf.

The Local Government General Records Retention Schedule may be accessed on KDLA's website at http://www.kdla.ky.gov/recmanagement/localschedule.htm.

The General Schedule for Electronic and Related Records may be accessed on KDLA's website at
http://kdla.ky.gov/recmanagement/schedules/erecordsgeneral.pdf

What is a Records Officer?

A Records Officer is the person named by the agency head to serve as the official liaison on records management issues with the Department for Libraries and Archives and to coordinate records management with the agency (725 KAR 1:010). Agencies should contact the Department for Libraries and Archives, State Records Branch for the proper documentation and submission of the appointed Records Officer**.** The Records Officer typically works with his/her agency's staff to compile or update a Records Retention Schedule in *draft* form, prior to its review by Department for Libraries and Archives' personnel and the State Archives and Records Commission. The schedule is subject to detailed analysis at this stage, including an assessment by legal and audit staff.

In addition to maintaining the currentness of the Agency's Retention Schedule, the Records Officer monitors records management practices in the agency by inventorying, analyzing, and advising the staff on records management procedures, coordinates collection and forwarding of state publications,

participates in the agency's Information Resources Planning process, coordinates the transfer of records, and supervises the authorized destruction of records which occurs within the agency. The Records Officer keeps a record of the destruction of public records, noting the authorization for said destruction and the amount of records destroyed, and makes an annual report of this record to a designated supervisor and to the Director of the Public Records Division per 725 KAR 1:010, Section 2 (2).

What is disposition?

The term "disposition" as it is used here refers to what is done with records when those records are no longer needed for current business. Disposition possibilities include transferring records from one agency to another when functions are officially transferred, transferring records to the State Records Center, destroying temporary records at an approved time, or transferring records of continuing value to the State Archives when they have been deemed worthy of preservation.

What about the proper storage and protection of records?

Another important role delegated to the agency is ensuring the proper storage of records. By the terms of KRS 171.690, whenever an agency head determines that substantial economies or increased operating efficiency can be achieved, the agency head is directed to provide for the storage, processing and servicing of appropriate records in the State Records Center maintained and operated by the Department for Libraries and Archives or, in a location maintained and operated by the agency itself that has been approved by the Department for Libraries and Archives,.

Providing for the protection of records is another essential responsibility delegated to the agencies, and as directed by KRS 171.710, the agency head is required to establish such safeguards against removal or loss of records as he believes necessary and as may be required by Department rules and regulations. These safeguards must include making it known to all officials and employees of the agency that no records are to be transferred, turned over to another, or destroyed except in accordance with the law, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records.

The agency head is also directed to notify the Department for Libraries and Archives of any actual, impending or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that come to his/her attention, and with the Department's assistance, to initiate action through the Attorney General for recovery of any records which may have been

unlawfully removed and for any other redress as may be provided by law. Penalties are established in statute for violations of the key elements of Kentucky's public records management law, and for state employees, these can include dismissal from state government. Kentucky's tampering with public records statute (KRS 519.060) and its laws dealing with unlawful access to a computer (KRS 434.845 - 850) and misuse of computer information (KRS 434.855) describe various records-related offenses which are punishable as felonies under the Kentucky Penal Code.

What about state agency publications?

A state publication or report is any published material, regardless of format, issued for general distribution, which documents agency-related functions or activities. As such, a state publication may be considered a "published record". State government agencies publish hundreds of reports, newsletters and studies each year. At times, a state publication may provide the only documentation of any agency or program's activity. State publications complement the information contained in agency files to present a full accounting of agency activity over time.

How are state agency publications managed?

Kentucky law (KRS 171.450 and 725 KAR 1:040 Section 1) provides that state agencies forward three (3) copies of all publications produced for general public distribution to the Kentucky Department for Libraries and Archives, Public Records Division, unless the publication is submitted electronically. An electronic publication needs only to be submitted one (1) time.

Once a state publication is received, a bibliographic entry is added to the Department's online catalog.

Retention and management of public records and the role of the Office of the Attorney General

All records produced by a public agency are subject to the provisions of the Open Records Act (KRS 61.878 – 884). Certain records and confidential information are exempt from inspection; these exemptions are stated in KRS 61.878.

KRS 15.257 (1) requires the Office of the Attorney General to distribute the provisions of the Open Meetings Act and Open Records Act to all county judge/executives, mayors, county attorneys, city attorneys, superintendents of public school districts, presidents of each state public postsecondary educational institution, and attorneys of public school districts and postsecondary educational institutions throughout Kentucky, written information that explains the procedural and substantial provisions of the Open Records Act together with information

required by KRS 171.223 to be prepared by the Department for Libraries and Archives concerning proper retention and management of public records.

What services does the Kentucky Department for Libraries and Archives provide in this process?

Under the provisions of KRS 171.450, the Department is responsible for managing and controlling records, in whatever medium, created by state and local government agencies in the Commonwealth. Specifically, as provided in KRS 171.410 - 740, the Department establishes standards, procedures, and administrative regulations for recording, managing, preserving and reproducing public (government-created or maintained) records.

Working in close collaboration with government agencies and their records officers, the Department prescribes policies, principles and administrative regulations to be followed by those agencies in managing their records; provides records analysis and scheduling assistance to agencies; furnishes technical assistance to agencies whose records have been damaged in disasters; and provides records management training and educational programs for public agencies.

The Department also serves as the central repository for archival public records in Kentucky, and creates finding aids for records in archival custody. Records housed at the State Archives are made available for research through the Department's Archives Research Room. At the State Records Center, the Department offers centralized storage and access services to government records of non-permanent retention and it sets rules governing the transfer of records from one agency to another.

What is the function of the State Archives and Records Commission?

The State Archives and Records Commission, under the terms of KRS 171.420 and 171.670, has the authority to review and approve all records retention schedules submitted by state and local public agencies through the Department. In this task, it considers the importance and potential uses of the record to the creating agency and various information values within a particular record. It also analyzes recommendations jointly developed by agencies and the Department's Public Records Division on how long particular records should be kept and determines what further disposition should be made of them. The Commission is concerned with preserving information of continuing value and making timely disposition of information of temporary value.

The Commission also advises the Department on a range of other matters relating to archives and records management.

What is the scope of the Commission's responsibility and who are its members?

In all cases, the State Archives and Records Commission has final and exclusive authority to determine the ultimate disposition of Kentucky's public records. Per KRS 171.420, its decisions are binding on all parties concerned, and those decisions can only be modified or otherwise changed by its own actions.

The Commission is a seventeen member body composed of:

- the State Librarian, who serves as Chair of the Commission;
- the Secretary of the Education and Workforce Development Cabinet;
- the Auditor of Public Accounts;
- the Chief Justice of the Supreme Court;
- the Director of the Legislative Research Commission;
- the Attorney General;
- the Director of the Office of Policy and Management;
- the Commissioner of Commonwealth Office of Technology;
- one member representing the University of Kentucky;
- one member representing the Kentucky Historical Society;
- one member representing the Kentucky Library Association;
- one member representing regional universities and colleges;
- one member representing local governments; and
- four citizens-at-large.

Where should I go for further assistance or more detailed information?

All public records management services are provided through the Department's Public Records Division, which can be reached at (502) 564-8300.

If you work for a state government agency, a public university or community college, or an office of the judicial branch, contact the State Records Branch for assistance and information about services at extension 237.

If you work for an agency of local government, contact the Local Records Branch for assistance and information about services at extension 255.

If you have a question relating to records management requirements for electronic records, contact the Technology Analysis and Support Branch, extension 244.

If you have questions concerning research at the State Archives or the holdings of the State Archives, contact Archival Services Branch at extension 202.

If you would like advice on the conversion of original paper records to microfilm or other image management format, including optical imaging, or have other questions about the Department's micrographic services, contact the Micrographics Branch at extension 321.

If you have a question about the physical preservation of original paper records or would like to secure these services from the Department, call extension 290.

For all other questions or information, please call extension 252.

There are many helpful resources and information available on the Department for Libraries and Archives website. Please refer to the following for assistance:

Managing Government Records Information:
http://kdla.ky.gov/recmanagement/managing.htm

Transmittal form:
http://kdla.ky.gov/recmanagement/schedules/kyrectransmittal.doc

Records Destruction form and instructions:
http://kdla.ky.gov/recmanagement/schedules/kyrecordsdestruction.doc

Destruction Guidelines:
http://kdla.ky.gov/recmanagement/Destruction%20Guidelines.pdf

Description and Analysis form:
http://kdla.ky.gov/recmanagement/d&aform.doc

Records Retention Scheduling: A Procedural Guide:
http://kdla.ky.gov/recmanagement/Retention%20Scheduling%20Guidelines.pdf